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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)

)
)
Amendment of the Commission's)
Policies and Rules for Licensing)
Fallow 800 MHZ Specialized)
Radio Spectrum Through A)
Competitive Bidding Process)

RM-7985

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COMMENTS OF
SOUTHWESTERN BELL CORPORATION IN OPPOSITION

Southwestern Bell Corporation (SBC), on behalf of its operating affiliates and subsidiaries, submits these comments in response to the Commission's Public Notice issued May 11, 1992 relating to Fleet Call, Inc.'s Petition for Rulemaking in the above matter.¹ SBC opposes Fleet Call's request.

I. Introduction

Fleet Call requests the Commission to amend its rules to establish and set aside large blocks of 800 MHZ trunked Specialized Mobile Radio (SMR) channels for auction to so-called SMR innovators. Specifically, Fleet Call proposes a set aside block of 105 channels. Fleet Call states that its proposal will accelerate the introduction of advanced digital SMR systems, promote the development of a

¹Petition for Rulemaking (hereafter "Petition"), filed April 22, 1992.

seamless nationwide digital SMR network, and provide additional services in smaller markets.²

Fleet Call's claims in this regard are vague, self-serving and largely unsupported. Fleet Call has not demonstrated that there is customer demand for SMR services justifying the proposed set aside; it has not identified any new SMR services which would be accelerated by the set aside; and it has not shown that this is the best place to test the use of spectrum auctions.

Unless or until Fleet Call makes such showings, there is an insufficient basis for rulemaking. If the true intent of the proposal is to stimulate competition and growth in the SMR service markets, that purpose would be better served by permitting common carriers to provide SMR and other auxiliary radio services on a private carriage basis.³

II. Customer Demand

Fleet Call emphasizes that many of the SMR channels, which it proposes for the set aside, remain fallow

²Petition, pp. i, 7, 19-21.

³See Amendment of the Commission's Rules to Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, Petition for Rulemaking, RM-7823, filed by Telocator on September 4, 1991.

and some have been fallow for a decade.⁴ What Fleet Call neglects to mention is why.

The reason many of the SMR frequencies have remained fallow is because there are not enough customers who desire conventional SMR services and/or the use of those SMR frequencies at current price levels. Indeed, Fleet Call makes no showing that there is any pent-up demand for SMR or advanced SMR services, and has provided no demand studies on that issue. Consequently, there is no factual or demonstrated basis for assuming that Fleet Call's proposal is necessary to meet customers' requests.

Also, if the initial costs of providing digital SMR service will be even higher than the costs of providing conventional SMR services, as Fleet Call claims they will be, chances of SMR services successfully utilizing these frequencies will be even more unlikely, since that will cause the prices for SMR services to rise beyond what the market apparently feels are already unacceptable or unattractive levels.⁵

In fact, the key to stimulating the use of these fallow frequencies may not be in allowing current SMR operations to use them at all. Private carriers such as Fleet Call have already had that opportunity, but have failed to do so. A better course may be to allow others,

⁴Petition, pp. i, 1-2, 6, 18.

⁵Petition, pp. 7, 18.

including common carriers, to use those frequencies on a private carriage basis. That result would be more likely to stimulate their use because common carriers could then use those frequencies in providing auxiliary SMR and dispatch services in competition with private operators or use them to provide service in areas where no SMR service is being provided today.⁶

III. New Services

Fleet Call characterizes its proposal as one which will create certain "innovator blocks."⁷ Presumably, then, the block will be for the use of innovative, new services. However, Fleet Call does not identify those new services, much less support its contention that they are innovative. If there are new services associated with Fleet Call's proposal, they should be clearly stated before licensing spectrum for their use. In this respect also Fleet Call's Petition is insufficient.⁸

⁶If, as SBC expects, the true purpose of the proposed set aside is to allow SMR operators greater flexibility in providing competitive, common carrier-like services, fair play would dictate that common carriers also be allowed to provide private SMR services. Otherwise, operators such as Fleet Call would have a competitive advantage in being able to offer services which their common carrier competitors cannot.

⁷Petition, pp. i, 1-2.

⁸Petition, p. ii. Wide area roaming is mentioned, and it is implied that such roaming is made possible as a result of new digital technology. Petition, p. 4, 17. But, as the Commission is no doubt aware, wide area roaming is not

Although the Petition is somewhat unclear on the point, Fleet Call appears to be advocating that the Commission license the block of 105 channels to one innovator.⁹ The problem with this proposal is that, instead of stimulating innovation and the development of new technology, it would likely commit all of the channels to one technology and not permit the use of those channels by others with potentially more innovative methods and techniques.¹⁰

This proposal frankly ignores that other technologies (e.g., wideband technology) may be feasible, and that innovative equipment design and architectures suited to low and/or medium numbers of customers may be a far more preferable solution than the commitment of large blocks of spectrum to one technology for a number of years. If the Commission decides to proceed with this matter, it may want to solicit comment from equipment manufacturers on whether they can improve equipment designs to make them more economical in small market areas. Only if that alternative shows no hope of equipment improvements should the

associated with digital technology, and in fact wide area roaming can be implemented in today's analog networks.

⁹Petition, pp. 4, 17.

¹⁰Fleet Call makes it evident in its Petition that in markets where it wins an auction, it will implement MIRS TDMA technology, and that it would expect to use all channels with that one technology. Petition, p. 4.

Commission consider licensing large blocks of spectrum for digital SMRs.

Furthermore, Fleet Call gives no real justification for licensing a block of 105 channels to one provider.¹¹ A smaller block (e.g., 42 or fewer channels) may be sufficient to start the process. Licensing a smaller block to one provider could also allow the licensing of another block to a second provider of digital SMR services in the same band, thus increasing competition and the possibility that more than one technology will be used. In the alternative, if the 42 or fewer channels are utilized expeditiously, licensing of additional blocks to the user is still possible.

Assuming that more than one technology will develop, it will be important that the technology for SMR wide area roaming be based on publicly developed standards. Such a requirement will allow interconnection of wide area roaming SMR and cellular networks leading to more choices and greater competition.¹²

¹¹Petition, pp. 5, 7-8, 20-21, 25-26.

¹²Conversely, since the Fleet Call roaming is based on one type of proprietary technology, i.e., Motorola's MIRS, the result could be that one company or group of companies could control both the technology and the business arrangements for the new SMR network infrastructure. Petition, p. 4.

IV. Auctions

Fleet Call skillfully combines its SMR allocation proposal with a proposal to accomplish the licensing through auction. This is an obvious attempt to capitalize on the political momentum which has been building for an auctioning approach to spectrum licensing.¹³

The fact remains, however, that the use of spectrum auctions and SMR licensing are separate ideas which should be considered independently, SMR spectrum is readily available to SMR providers today. Moreover, auctions, assuming they are appropriate, would be appropriate for more than SMR licensing and would require a broader investigation.

It is not appropriate in any event to use auctions as the basis for evaluating Fleet Call's SMR proposal. That proposal should be evaluated, if at all, on its own merits or lack thereof without reference to the use of auctions. If the SMR proposal is shown to have independent merit, at that time and only at that time should the auction proposal be considered.

Even if the Commission finds merit in Fleet Call's proposal, it may not be the best place in which to consider the use of auctions. If, as history indicates, the SMR services are something that no one wants in the secondary markets, the value of the license could well be zero. As

¹³Petition, pp. ii, 2, 24-31.

noted earlier, there are no customers waiting for SMR service in those areas at current price points, and the demand for fallow frequencies is likely to be extremely low, at least as long as they are licensed solely for private carrier conventional SMR services or higher priced digital SMR services in small or medium-sized market areas.

Because it is likely that the auction prices will not be high for conventional SMR services or higher priced digital SMR services in such markets, this may not be the best test bed for demonstrating the value of spectrum auctions, particularly if they end up having little or no value. On the other hand, if for some reason, the bids turn out to be high, it is likely that the bidder will then claim economic hardship and eventually ask that the spectrum be authorized for other purposes. For this reason, it is imperative that the Commission and the parties know and fully understand what purposes and services are intended before the license is assigned.¹⁴ Again, Fleet Call's Petition does not adequately address this issue.

¹⁴Otherwise, the licensee would be able to horde spectrum claiming one thing, while really intending another, such as using the spectrum to provide common carrier as opposed to traditional private dispatch services. Fleet Call has already successfully used that ploy. See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd. 1533 (1991), Recon. den. 6 FCC Rcd. 6949 (1991).

V. Conclusion

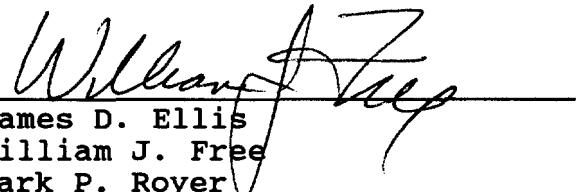
Fleet Call's Petition is deficient in several important respects, including failure to demonstrate customer demand for or to even identify with specificity the purported new services for which the spectrum licensing is sought. A more detailed demonstration should be required before promulgating any rulemaking on Fleet Call's Petition.

If the Commission proceeds with Fleet Call's Petition, it should expand the rulemaking to consider the use of these frequencies by common carriers in the provision private SMR and auxiliary dispatch services. In that manner, the Commission can more realistically promote and stimulate the use of these frequencies for SMR services on a private basis.

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CERTIFICATE OF SERVICE

I, Mary J. Mercer, hereby certify that copies of the foregoing Comments of Southwestern Bell Corporation in Opposition have been served by first class United States mail, postage prepaid, on the parties listed on the attached.



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